Mohd Riza bin Mat Rani & Ors v Zurich General Takaful Malaysia Bhd & Anor

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO W-02(NCC)(A)-560–03 OF 2022
RAVINTHRAN, MARIANA YAHYA AND LIM CHONG FONG JJCA
4 OCTOBER 2024

Insurance — Motor insurance — Liability — Application by insurer pursuant to s 96 of Road Transport Act 1987 for declaration that policy issued by insurer unenforceable — Registration number of car that involved in accident was similar to registration number of original car insured by insurer — Chassis number of original car insured by insurer was different from chassis number of car involved in accident — Whether insurer could avoid policy considering that car that involved in accident was not the very same car that was originally registered with Road Transport Department — Financial Services Act 2013 Schedule 9 para 5 — Road Transport Act 1987 s 96(3)

The present case arose from an accident that occurred on 17 May 2020 at Jalan Kubang Ikan, Kuala Terengganu, involving a car bearing registration No PFT 1327 owned and driven by the first appellant and a motorcycle bearing registration No JMJ 5996 ridden by the second appellant. The second and third appellants were injured during the accident. The insurer of the said car ('the first respondent') filed an originating summons pursuant to s 96 of the Road Transport Act 1987 ('the RTA') seeking, inter alia, a declaration that the certificate of takaful issued by the first respondent was unenforceable in respect of the second and third appellants' injuries from the accident ('the said declaration'). The original owner of the said car was then joined as the second respondent in the said application. The first respondent discovered that the certificate of takaful was issued for a car bearing registration No PFT 1327 with a chassis No PL1CF1SNR4F179164 ('the original car'), which was different from the chassis number of the first appellant's car. The original car was involved in an earlier accident in 2012 and was written off in 2013. As the original car which was the subject matter of the certificate of takaful, was different from the first appellant's car, which was the vehicle involved in the accident, the High Court allowed the originating summons and granted the said declaration, hence, the present appeal. The main issue in the present appeal was whether, having regard to the fact that a car with registration No PFT 1327 existed in the official record of the Road Transport Department ('the JPJ'), the issuance of the policy in question for a car bearing the same registration number by the first respondent could be voided under s 96 of the RTA on the ground that it was not the actual car that was insured.

Held, allowing the appeal and setting aside the decision of the High Court with costs of RM30,000 here and below:

(1) In the present case, the car registration number and the registered owner that was stated in the insurance policy correctly matched the JPJ records. It may well be that the car involved in the accident was a different car than the car originally registered. However, what was sought to be protected by the compulsory insurance policy regime under s 96 of the RTA was coverage of risks to innocent third-party road users by insurers who had underwritten the said risk. In other words, s 96 reflected the social policy of Parliament to prevent insurers from avoiding compensating innocent road users by solely relying on the terms of the contract with the insured (see para 23).

(2) In the premises, insofar as third-party insurance coverage was concerned, the first respondent as insurer who issued the policy in question, could not now, after the risk materialised, void the policy on the ground they did not insure the very car in question. As stated in numerous authorities, third-party coverage for motor vehicles under the RTA was not merely a contractual liability but a statutory one. Therefore, breaches of any term of the policy that may affect liability between insured and insurer would not affect innocent third-party road users who suffered personal injuries as a result of an accident. Furthermore, in the instant case, the risk to the third-party road users was not specifically excluded by the policy (see para 24).

(3) In the present case, there was a complete absence of information from the first respondent with respect to the circumstances in which the policy was renewed. The registered owner in the JPJ records was a female, ie, the second respondent. Over a period of six years, the insurance policy was renewed by different insurers. The first respondent renewed the policy twice before the accident. The first appellant who was driving the car at the time of the accident and presumably in possession of the car was a male. In the premises, whoever renewed the policy on behalf of the first respondent should have been put on query. In the present case, the proposal form, for some reason, was never exhibited by the first respondent. Therefore, it was not known under what circumstances the policy was renewed twice by the first respondent. The relevant evidence, ie the questions posed to the person renewing the policy or the proposal form should have been disclosed by the respondent. As the above evidence was not before the court, it could be concluded that the first respondent as insurer did not undertake any of the steps mentioned in para 5 of Schedule 9 of the Financial Services Act 2013 (see para 33).

(4) For the above reasons, the court opined that the first respondent as the insurer could not obtain the discretionary relief of declaration under s 96

of the RTA. Insofar as the second respondent was concerned, it was plain that a s 96(3) declaration was only meant for insurers and not for registered users (see para 34).

[Bahasa Malaysia summary

Kes semasa berpunca daripada kemalangan yang berlaku pada 17 Mei 2020 di Jalan Kubang Ikan, Kuala Terengganu, melibatkan sebuah kereta bernombor pendaftaran PFT 1327 yang dimiliki dan dipandu oleh perayu pertama serta sebuah motosikal bernombor pendaftaran JMJ 5996 yang ditunggangi oleh perayu kedua. Perayu kedua dan ketiga telah mengalami kecederaan semasa kemalangan tersebut. Penanggung insurans kereta tersebut ('responden pertama') memfailkan saman pemula menurut s 96 Akta Pengangkutan Jalan 1987 ('APJ') memohon, antara lain, pengisytiharan bahawa sijil takaful yang dikeluarkan oleh responden pertama tidak boleh dikuatkuasakan berkenaan dengan kecederaan perayu kedua dan ketiga akibat kemalangan tersebut ('pengisytiharan tersebut'). Pemilik asal kereta tersebut kemudiannya dimasukkan sebagai responden kedua dalam permohonan tersebut. Responden pertama mendapati bahawa sijil takaful telah dikeluarkan untuk kereta yang mempunyai nombor pendaftaran PFT 1327 dengan nombor casis PL1CF1SNR4F179164 ('kereta asal tersebut'), yang berbeza daripada nombor casis kereta perayu pertama. Kereta asal tersebut terlibat dalam kemalangan yang lebih awal pada tahun 2012 dan telah dilupuskan pada tahun 2013. Memandangkan kereta asal yang menjadi subjek sijil takaful tersebut adalah berbeza daripada kereta perayu pertama, iaitu kenderaan yang terlibat dalam kemalangan tersebut, Mahkamah Tinggi membenarkan saman pemula dan memberikan pengisytiharan tersebut, justeru, rayuan semasa. Isu utama dalam rayuan ini adalah sama ada, dengan mengambil kira fakta bahawa kereta dengan nombor pendaftaran PFT 1327 wujud dalam rekod rasmi Jabatan Pengangkutan Jalan ('JPJ'), pengeluaran polisi tersebut untuk kereta yang mempunyai nombor pendaftaran yang sama oleh responden pertama boleh dibatalkan di bawah s 96 APJ atas alasan bahawa ia bukan kereta sebenar yang diinsuranskan.

Diputuskan, membenarkan rayuan dan mengenepikan keputusan Mahkamah Tinggi dengan kos sebanyak RM30,000 di sini dan di bawah:

(1) Dalam kes semasa, nombor pendaftaran kereta dan pemilik berdaftar yang dinyatakan dalam polisi insurans tersebut adalah sepadan dengan rekod JPJ. Mungkin kereta yang terlibat dalam kemalangan tersebut adalah kereta yang berbeza daripada kereta yang didaftarkan pada asalnya. Walau bagaimanapun, apa yang ingin dilindungi oleh rejim polisi insurans wajib di bawah s 96 APJ ialah perlindungan risiko kepada pengguna jalan raya pihak ketiga yang tidak bersalah oleh penanggung insurans yang telah menaja jamin risiko tersebut. Dalam erti kata lain, s 96 mencerminkan dasar sosial Parlimen untuk menghalang

penanggung insurans daripada mengelak daripada memberi pampasan kepada pengguna jalan raya yang tidak bersalah dengan hanya bergantung pada terma kontrak dengan pihak yang diinsuranskan (lihat perenggan 23).

(2) Berdasarkan premis-premis tersebut, setakat yang berkenaan dengan perlindungan insurans pihak ketiga, responden pertama sebagai penanggung insurans yang mengeluarkan polisi berkenaan, kini tidak boleh, selepas risiko berkenaan menjadi kenyataan, membatalkan polisi tersebut atas alasan mereka tidak menginsuranskan kereta berkenaan. Seperti yang dinyatakan dalam banyak otoriti, perlindungan pihak ketiga untuk kenderaan bermotor di bawah APJ bukan sahaja liabiliti kontrak tetapi liabiliti berkanun. Oleh itu, pelanggaran mana-mana terma polisi yang boleh menjejaskan liabiliti antara pihak yang diinsuranskan dan penanggung insurans tidak akan menjejaskan pengguna jalan raya pihak ketiga yang tidak bersalah yang mengalami kecederaan diri akibat suatu kemalangan. Tambahan pula, dalam kes semasa, risiko kepada pengguna jalan raya pihak ketiga tidak dikecualikan secara khusus oleh polisi tersebut (lihat perenggan 24).

(3) Dalam kes semasa, tidak ada langsung maklumat daripada responden pertama berkenaan dengan keadaan di mana polisi tersebut diperbaharui. Pemilik berdaftar dalam rekod JPJ adalah seorang perempuan, iaitu, responden kedua. Dalam tempoh enam tahun, polisi insurans tersebut telah diperbaharui oleh penanggung insurans yang berbeza. Responden pertama memperbaharui polisi tersebut dua kali sebelum kemalangan tersebut berlaku. Perayu pertama yang memandu kereta tersebut semasa kemalangan dan berkemungkinan memiliki kereta tersebut adalah seorang lelaki. Berdasarkan premis-premis tersebut, sesiapa yang memperbaharui polisi bagi pihak responden pertama sepatutnya telah disoal. Dalam kes ini, borang cadangan, atas sebab-sebab tertentu, tidak pernah dieksibitkan oleh responden pertama. Oleh itu, tidak diketahui dalam keadaan apa polisi tersebut diperbaharui dua kali oleh responden pertama. Keterangan yang berkaitan, iaitu soalan yang dikemukakan kepada orang yang memperbaharui polisi tersebut atau borang cadangan, sepatutnya didedahkan oleh responden. Oleh kerana keterangan di atas tidak ada di hadapan mahkamah, boleh disimpulkan bahawa responden pertama sebagai penanggung insurans tidak melakukan mana-mana langkah yang disebut dalam perenggan 5 Jadual 9 Akta Perkhidmatan Kewangan 2013 (lihat perenggan 33).

(4) Atas sebab-sebab di atas, mahkamah berpendapat bahawa responden pertama sebagai penanggung insurans tidak boleh mendapatkan relif budi bicara pengisytiharan di bawah s 96 APJ. Berkenaan dengan responden kedua pula, adalah jelas bahawa pengisytiharan s 96(3) hanya

dimaksudkan untuk penanggung insurans dan bukan untuk pengguna berdaftar (lihat perenggan 34).

Cases referred to

AmGeneral Insurance Bhd v Sa' Amran a/l Atan & Ors and other appeals [2022] 5 MLJ 825; [2022] 8 CLJ 175, FC (refd)

Balamoney a/p Asoriah (lawful mother and next friend of Jayandran a/l Mathan, a minor) v MMIP Services Sdn Bhd [2019] MLJU 2172; [2020] 1 CLJ 476, CA (refd)

Zurich General Takaful Malaysia Bhd & Anor v Mohd Riza bin Mat Rani & Ors [2022] MLJU 2408, HC (refd)

Legislation referred to

Financial Services Act 2013 s 129, Schedule 9, para 5, 5(9),
Road Transport Act 1987 ss 15, 90(1), (2), 91(1)(b), (3), 96, 96(1), (2), (3)

Appeal from: *Zurich General Takaful Malaysia Bhd & Anor v Mohd Riza bin Mat Rani & Ors* [2022] MLJU 2408 (High Court, Kuala Lumpur)

R Ganavathy Naidu a/l N Rasu (G Naidu & Partners) for the appellants.
CM Maran (Kenneth William & Assoc) for the respondents.

Ravinthran JCA:

INTRODUCTION

[1] This is an appeal against the decision of the High Court that granted a declaration in favour of the insurer to avoid a third-party motor vehicle insurance policy under s 96 of the Road Transport Act 1987. The appellants in this appeal had sued the driver of the car that was subject of the said insurance policy in the sessions court. They suffered injuries as a result of a collision between the said car and their motorcycle. The driver of the car was also a defendant in the instant originating summons that was taken out by the insurance company to avoid the insurance policy. However, he did not appeal against the decision of the High Court.

[2] The main issue in this appeal is whether the first respondent as the insurer at the time of the accident can avoid the policy given the fact that the car collided with the motorcycle of the appellants was not the very same car that was originally registered with the Jabatan Pendaftaran Jalan ('JPJ') or Road Transport Department with registration No PFT 1327. The original car was involved in an earlier accident in 2012 and was written off in 2013. The accident that is the subject of the personal injury action instituted by the appellants occurred in 2020. However, at the material time of the accident in

question, the original owner of car bearing registration No PFT 1327 remained as owner in the records of the Jabatan Pendaftaran Jalan. She was joined as the second plaintiff in the s 96 application and is now the second respondent.

[3] The High Court allowed the application of the insurer, ie the first respondent to avoid the insurance policy on the main ground that the first defendant's car 'is not the vehicle that is the subject to the Certificate of Insurance'.

BACKGROUND FACTS

[4] The following summary of the background facts is extracted from the judgment of the High Court and the affidavits filed by the parties.

[5] On 17 May 2020, a road accident occurred at Jalan Kubang Ikan, Kuala Terengganu involving car bearing registration No PFT 1327 and a motorcycle. The car was driven by the first defendant. The second appellant was the rider of the motorcycle bearing registration No JMJ 5996. The first appellant was the pillion rider. Both second and third appellants sustained serious injuries. They instructed their solicitors to commence a personal injury action.

[6] A search conducted on their behalves revealed that the car bearing registration No PFT 1327 was issued with an insurance policy that included third party coverage on 9 January 2020 by the first respondent. The second and third appellant's solicitors served a notice to the first appellant under s 96(2) of the Road Transport Act 1987 for the enforcement of any potential judgment.

[7] However, the adjustor for the first appellant discovered the following facts. The JPJ registration number of the car was PFT 1327. The registered owner on the insurance policy was stated to be one Nor Ashikin bt Abd Rahman who is the second respondent. The chassis number of the car was stated to be PL1CFISNR4F179164 in the insurance policy. Their investigation revealed that the car imprinted with above mentioned chassis number was written off much earlier in 2011 by its then insurer, Sykt Takaful Malaysia Bhd ('STMB') following an accident. The second respondent had surrendered the car, the registration card, the keys and STMB's 'Certificate of Takaful' and the discharge voucher to STMB. The second respondent received the sum of RM9,400 from STMB for the settlement of her claim.

[8] The first respondent lodged a police report in respect of this discovery. Further investigation by the Chemistry Department revealed that the accident on 9 January 2020 involved a car that bore a different chassis number, ie PL1CF1SNR6F247125. This car was colloquially referred to in the High Court as the 'cloned car' as it was using the identity of another car.

[9] For some reason or other, the registration of car with the registration No PFT 1327 in the JPJ records was not cancelled. At this stage, there is no evidence to point the finger of blame at anyone, including the JPJ. Due to the fact that the records were not updated at the JPJ, what followed was very unfortunate. Insurance policies in respect of car bearing registration number bearing PFT 1327 were issued seven times between 14 August 2012 and 9 January 2020 by four different insurance companies. The first policy after the 2011 accident was issued by Allianz General Insurance on 14 August 2012. The insured in all these policies were stated to be the second plaintiff. In her police report, the second respondent who is the registered owner of car bearing registration No PFT 1327 denied knowledge of the said policies.

DECISION OF THE HIGH COURT

[10] The learned judicial commissioner made the following findings in para [11] of her judgment:

(a) the actual motorcar which is covered by the Certificate of Takaful is not the first defendant's motorcar; and

(b) the first defendant's motorcar is a cloned car, with the chassis number tampered with, to resemble the chassis number of the actual motorcare.

[11] Her Ladyship in allowing the application of the first respondent concluded as follows in paras [12]–[16] of the judgment:

> [12] The importance of the chassis number and the engine number is evident in s 10 of the RTA, which provides for the registration of vehicles. Section 10(3) states that no motor vehicle shall be registered unless:
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> > (a) such vehicle bears a clear, distinct and untampered engine and chassis number ...
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> [13] The above sub-section shows the emphasis placed on there having to be a clear engine number and chassis number on a vehicle. The reason for this is because the identity of vehicles is determined by the chassis and engine numbers, as opposed to the registration numbers. The courts have adopted this approach, holding that the identity of a vehicle is determined by the chassis and/or engine numbers (see *Dato' Othman bin Hashim v KKW Auto Centre* [2012] 5 MLJ 756; *Hong Leong Bank Bhd (yang telah mengambilalih keseluruhan perniagaan, aset dan liabiliti Hong Leong Finance Bhd lwn Law Bee Seng (Soh Lian Hwa (pihak ketiga))* [2012] MLJU 381; [2013] 7 CLJ 505 and *Abdul Wahdi bin Zakaria (berniaga atas nama dan gaya Syarikat Bengkel Setia) v Puspakom Sdn Bhd* [2014] MLJU 271; [2014] 4 CLJ 785).
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> [14] Going by the different chassis numbers of the actual motorcar and the first defendant's motorcar, the first defendant's motorcar cannot be said to be covered by the Certificate of Takaful. In *Magnum Finance Bhd v Tan Ah Poi & Anor* [1996] MLJU 538; [1997] 4 CLJ SUPP 44, the High Court found a hire purchase agreement to be void for total failure of consideration, as the vehicle that was the

> subject matter of the agreement bore a different engine and chassis number than the vehicle as registered with the Road Transport Department ...
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> [15] Similarly, it this clear in this case that the first defendant's motorcar is not the vehicle that is subject to the Certificate of Insurance. In view thereof, the first plaintiff is not the insurer of the first defendant's motorcar, and is not liable for any judgment that may be obtained by the second and third defendants in the accident suit, or any other judgment that may be obtained in respect of the accident.
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> [16] Further, having surrendered the wreckage of the actual motorcar, and having received compensation for total loss of the actual motorcar in 2013, the second plaintiff does not have possession, control or usage of the actual motorcar. As such, she has no insurable interest in the actual motorcar, following which the Certificate of Takaful issued under her name for the actual motorcar is void.

[12] Counsel for the appellants has not disputed the fact that the car that was involved in a collision with his clients was not the self-same car that was written off in 2013. However, he argued that since the first plaintiff issued an insurance policy in question for a car with registration No PFT 1327, insofar as third-party accident victims are concerned, the duty to provide third-party coverage that is statutorily mandated in s 91(1)(b) of the Road Transport Act 1987 cannot be avoided.

ISSUES

[13] The only argument of the first respondent to void the policy which they issued and collected premium is that the car bearing registration No PFT 1327 was written off and the car that is the subject of the policy in question now is a different car. As we said earlier, there is no dispute that the car that was originally issued registration No PFT 1327 bore a different chassis number from the car that collided with the second and third appellants. The argument of the first respondent was that they did not insure the said car and therefore the second respondent as the insured did not have an insurable interest in it.

[14] Counsel for the appellants have however argued that such an approach is not warranted as the issue at hand is not a contractual matter between insurer and insured but about statutory third-party risks coverage provided by the Road Transport Act 1987 to protect innocent road users such as his clients.

[15] Thus, the principal question that arises in this appeal is this. It is whether, having to regard to the fact that a car with registration No PFT 1327 existed in the official record of the JPJ, the issuance of the policy in question for a car bearing the same registration number by the first respondent can be voided under s 96 of the Road Transport Act 1987 on the ground that it was not the actual car that was insured.

DECISION

[16] In order to answer the question, we shall first advert to the relevant provisions of the Road Transport Act 1987 ('the RTA') that provide for compulsory third-party insurance coverage. Section 90(1) states that it is not lawful for 'any person to use or cause or permit any other person to use' a motor vehicle without there being in force third-party insurance. Section 90(2) makes non-compliance with s 90(1) a criminal offence.

[17] Section 91(1)(b) prescribes the third-party insurance policy that will comply with the RTA. It must be a policy that:

> ... insures such person, or class of persons as may be specified in the policy in respect of any liability which may be incurred by him or them in respect of the death of or bodily injury to any person caused by or arising out of the use of the motor vehicle or land implement drawn on a road:

[18] Section 91(3) enacts that the insurer is liable to indemnify the person or class of persons in respect of any liability. It reads as follows:

> Notwithstanding anything in any written law, a person issuing a policy of insurance under this section shall be liable to indemnify the person or class of persons specified in the policy in respect of any liability which the policy purports to cover in the case of that person or class of persons.

[19] However, in respect of third-parties who have claims under a judgment against an insurer, s 96 places limits on avoidance of liability. Subsection (1) states, notwithstanding that the insurer may be entitled to avoid the policy, he shall pay subject to the said section. Of relevance to this case is sub-s (3) which reads as follows:

> No sum shall be payable by an insurer under subsection (1) if before the date the liability was incurred, the insurer had obtained a declaration from a court that the insurance was void or unenforceable:

[20] The first respondent in this originating summons case has applied for a declaration under this provision that the policy is void.

[21] In the instant case, the first respondent issued the policy in respect of car bearing registration No PFT 1327 and at the material time the registration number was not cancelled in the JPJ records. The registered owner was stated to be the second respondent. It is not known who applied or submitted the proposal form to renew the policy in question as the second respondent had parted with the first car since 2013. However, the essential fact to note is that the car in question was being used on a public road since 2013 with four different insurance companies issuing or renewing third-party insurance policy

as required under the law. Without the insurance policies being renewed, including the policy in question, by virtue of s 90(1) and (2), the car in question would not have been issued with a motor vehicle licence or 'road tax' under s 15 of the RTA. In other words, it was the issuance or renewal of the insurance policy for the car in question that legally facilitated its use on a public road.

[22] We note that the principal argument of the first respondent as the insurer in the High Court was that in the insurance policy, the stated chassis number of the car is different from the chassis number of the actual car that was involved in the accident in question. According to counsel for the respondents, it follows that the first respondent did not insure the said car and is therefore not obliged to satisfy any judgment in favour of the appellants.

[23] In our view, this argument failed to consider the following points in respect of third-party insurance protection in the RTA. The car registration number and the registered owner that is stated in the insurance policy correctly matched the JPJ records. It may well be that the car involved in the accident is a different car than the car originally registered. However, what is sought to be protected by the compulsory insurance policy regime under s 96 of the RTA is coverage of risks to innocent third-party road users by insurers who had underwritten the said risk. In other words, s 96 reflects the social policy of Parliament to prevent insurers from avoiding compensating innocent road users by solely relying on the terms of the contract with the insured.

[24] In the premises, insofar as third-party insurance coverage is concerned, the first respondent as insurer who issued the policy in question, cannot now, after the risk materialised, void the policy on the ground they did not insure the very car in question. As stated in numerous authorities, third-party coverage for motor vehicles under the RTA is not merely a contractual liability but a statutory one. Therefore, breaches of any term of the policy that may affect liability between insured and insurer would not affect innocent third-party road users who suffered personal injuries as a result of an accident. Furthermore, in the instant case, the risk to the third-party road users is not specifically excluded by the policy.

[25] In this respect, we shall draw an analogy with two cases where the insurer attempted to void the policy on the ground that the registered owner did not have insurable interest. In the first case, the vehicle had already been sold to another person and the JPJ records were not updated. In the second case, the insurance policy was renewed in the name of the deceased registered owner. In both these cases, the insurer was still held to be liable to indemnify a third-party road accident victim.

[26] In the case of *AmGeneral Insurance Bhd v Sa' Amran a/l Atan & Ors and other appeals* [2022] 5 MLJ 825; [2022] 8 CLJ 175, the Federal Court heard eight appeals. In the first appeal, the leave question considered by the Federal Court was whether the registration imposes liability on the insurer notwithstanding the insured ceased to have insurable interest in the motor vehicle at the time of the accident. In that case, the insured sold the motor vehicle without the knowledge of the insurer but nonetheless remain on the JPJ register as the owner. The insurance policy had not expired that time. Nonetheless, the insurer argued that by selling the car without the knowledge of the insurer, the insured had divested herself of 'insurable interest' in the car. Therefore, it follows that the insurer is not liable to indemnify any innocent third-party claimant for personal injury arising from a road accident involving the said car.

[27] The Federal Court, speaking through Abdul Rahman Sebli FCJ (now CJ (Sabah and Sarawak)) rejected the said argument which is based on the alleged cessation of 'insurable interest' after giving careful consideration to the purpose of the statutorily mandated third-party motor vehicle insurance coverage. The Federal Court said as follows in the following passages:

> [46] The court in dealing with a claim for damages by a third party accident victim must not close its eyes to the fact that the insurer has received payment for issuing the third party risks insurance policy to the insured. Having received such payment, the insurer cannot look the other way and resile from its promise to indemnify the insured when indemnity became due by raising the technical ground that the insured had no insurable interest in the motor vehicle at the time of the accident, unless the insurance policy had expired or had been lawfully terminated.
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> [47] The doctrine of 'mutual benefit and burden' demands that a person cannot take the benefit of a deed without subscribing to the obligations under it: see *Halsall and others v Brizell and another* [1957] Ch 169. The truth is, the real beneficiary of the statutory third party risks insurance policy is the third party accident victim and not the insured. The insured of course benefits by being indemnified by the insurer for any judgment sum obtained against him by the third party accident victim.
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> [49] ... We find nothing in the RTA that can be construed to mean that a third party risks insurance policy lapses upon sale of the motor vehicle to a third party if otherwise the policy is valid and subsisting, ie, has not expired at the time of the sale. It needs to be borne in mind that insurance coverage for third party risks is compulsory under the RTA and failure by any person to comply with the requirement constitutes an offence punishable with fine or with imprisonment or with both, in addition to an order of disqualification from holding or obtaining a driving licence for a specified period.

[28] The Federal Court concluded that notwithstanding the fact that the insured ceased to have insurable interest in the vehicle at the time of the

accident, the insurer is nonetheless liable to indemnify the third-party accident victim claimant.

[29] In the second case, ie *Balamoney a/p Asoriah (lawful mother and next friend of Jayandran a/l Mathan, a minor) v MMIP Services Sdn Bhd* [2019] MLJU 2172; [2020] 1 CLJ 476, after the accident in which a third-party road user was injured, the adjuster discovered that the insurance policy was renewed in the name of deceased insured without the knowledge of the insurer. For this reason, the insurer filed the application under s 96 of the RTA to seek a declaratory order that it was not the insurer of the policy and that the policy was null and void because of the breach of the duty of utmost good faith. The insurer succeeded before the High Court. The Court of Appeal allowed the appeal and its decision was affirmed by the Federal Court.

[30] The Court of Appeal found that the circumstances surrounding the renewal of the policy could not be addressed in a s 96 application as only the mother of the injured third-party road user who was a minor participated in the proceedings. Furthermore, s 129 and Schedule 9 of the Financial Services Act 2013 which applies to a consumer contract was not considered by the High Court. The Court of Appeal noted that under sub-para 5(9), the mutual duty of utmost good faith is owed at all times by both insurer and insured. In the following paragraphs, the Court of Appeal said that if the insured does not respond to the queries of the insurer, the insurer is expected to pursue the matter and safeguard its interests. Otherwise, the insurer cannot complain later and apply to void the policy. The said paragraphs of the judgment are as follows:

> [41] When asked by the insurer, the consumer is required to respond. And, once again, if the consumer fails to respond, be it to confirm or to amend any matter queried by the insurer, the insurer is expected to pursue the matter. If it fails to do so, just like the case of new contracts of insurance, the insurer will be deemed to have waived its rights to require disclosure by the consumer — see sub-para 5(6).
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> [42] Thus, whether it is a case of a new consumer insurance contract or a renewal of such contract, the consumer is always under a duty to take reasonable care not to make any misrepresentations to the insurer — see sub-paras 5(2) and (9). The consumer must ensure that there is no misrepresentation, whether deliberate or reckless, careless or even innocent.
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> [43] It is apparent from these provisions, that where the insurer is in itself in breach either by not pursuing or safeguarding its own interests and obligations, it will not be open to the insurer to approach the court for a declaration under s 96(3) of Act 333 to void the insurance contract. This becomes clearer when Parts 2 and 3 are examined closely.

[31] In the above-mentioned case, there was no evidence that the insurer posed any questions to whoever who renewed the policy in question. For that

reason, the Court of Appeal concluded as follows:

> [55] There is, however, no information at all as to when or how exactly the application for renewal of the insurance policy was made, and what questions were raised by the respondent. On the contrary, it may be reasonably concluded that the respondent did none of the matters or undertook any of the steps mentioned, that it did not ask any questions or sought any confirmation or amendment at the material time of renewal of the insurance policy.

[32] The Court of Appeal also observed that innocent third-parties involved in accidents would not have such knowledge and drew attention to the social intent found in s 96 of the RTA in the following passage:

> [47] In the case of third party risks, it is almost impossible for innocent third parties who are involved in road traffic accidents to be in possession of any knowledge of the contract of insurance or the consumer insurance contract, let alone the conditions or circumstances under which such contracts were made. The enactment of the statutory regime that we now see in Schedule 9 evens out or balances that duty of utmost good faith and makes the safeguards under Act 333 more meaningful and its social intent or objectives of minimum compulsory insurance, respected and achieved.

[33] Similarly, in the instant case, there a complete absence of information from the first respondent with respect to the circumstances in which the policy was renewed. The registered owner in the JPJ records is a female, ie the second respondent. Over a period of six years, the insurance policy was renewed by different insurers. The first respondent renewed the policy twice before the accident. The first defendant who was driving the car at the time of the accident and presumably in possession of the car is a male. In the premises, whoever renewed the policy on behalf of the first respondent should have been put on query. In the instant case, the proposal form, for some reason, was never exhibited by the first respondent. Therefore, it is not known under what circumstances the policy was renewed twice by the first respondent. The relevant evidence, ie the questions posed to the person renewing the policy or the proposal form should have been disclosed by the second respondent. As the above evidence was not before the court, as in the above-mentioned case of *Balamoney Asoriah,* it can be concluded that the first respondent as insurer did not undertake any of the steps mentioned in para 5 of Schedule 9 of the Financial Services Act 2013.

[34] For the above reasons, we are of the view, that the first respondent as the insurer cannot obtain the discretionary relief of declaration under s 96 of the RTA. Insofar as the second respondent is concerned, it is plain that a s 96(3) declaration is only meant for insurers and not for registered users. For the above reasons, the appeal is allowed and decision of High Court is set aside with costs of RM30,000 here and below.

Appeal allowed; decision of High Court set aside with costs of RM30,000 here and below.

Reported by Dzulqarnain Ab Fatar